

# Exhibit E



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# Transcript of Ruth Smith

**Date:** December 2, 2022

**Case:** Smith -v- SunPath, Ltd.

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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

-----x

RUTH SMITH, individually :

and on behalf of all :

others similarly situated, :

Plaintiffs, : Case No.:

v. : 1:22-cv-00081-LMB-TCB

SUNPATH, LTD., a :

Massachusetts corporation, :

Defendant. :

-----x

Deposition of RUTH SMITH

McLean, Virginia

Friday, December 2, 2022

9:56 a.m. EST

Job No: 472707

Pages: 1 - 213

Reported by: Kelly Carnegie, CSR, RPR

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1           Deposition of RUTH SMITH, held at the offices  
2 of:

3  
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5  
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7  
8           Roth Jackson Gibbons Condlin, PLC  
9           8200 Greensboro Drive  
10          Suite 820  
11          McLean, Virginia 22102

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18          Pursuant to Notice, before Kelly Carnegie,  
19 Certified Shorthand Reporter, Registered  
20 Professional Reporter, and Electronic Notary  
21 Public in and for the Commonwealth of Virginia.  
22

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A P P E A R A N C E S

2

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E X H I B I T S   C O N T I N U E D

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1 screenshots and documents that you provided to  
2 your counsel in order to draft this complaint,  
3 right?

4 A Uh-huh, right.

5 Q And then on November 11, we received  
6 these supplemental interrogatory responses. Is  
7 there anything that you learned in between the  
8 time that you submitted that information relating  
9 to what was in the complaint and when you  
10 submitted these supplemental interrogatory  
11 responses?

12 A So at the time when I submitted the  
13 logs, it was the best of my knowledge. But now  
14 based on the call logs that we found in discovery,  
15 my understanding is there was a lot more phone  
16 calls made to me than what I reported.

17 Q But you have not reviewed the call logs  
18 that you're referring to?

19 A I defer to my counsel.

20 Q And the call logs that you're referring  
21 to, did you learn the information that you're  
22 referring to before or after you submitted these



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1 BY MR. CAFFAS:

2 Q So then would it be accurate to say that  
3 between when you submitted the complaint and the  
4 information you knew at the time of the complaint  
5 and when you submitted the information in the  
6 supplemental interrogatory responses that are in  
7 front of you, you didn't learn any new  
8 information?

9 A I learned the information just very  
10 recently, so it would be after.

11 Q And when you say the information that  
12 you learned recently, you're referring to --

13 A The call logs.

14 Q So there's nothing else new that you  
15 learned from --

16 A Not to my knowledge, no.

17 Q So I'll direct you again to the calls  
18 that you describe in that first paragraph there.  
19 So do you see where I'm pointing to where it says,  
20 "On May 26, 2020, plaintiff received two  
21 unsolicited calls from the caller ID  
22 (410) 844-6327 directed to her cellular telephone

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1           Q   Specifically with respect to the  
2   document marked SMITH11, if you'll take a look at  
3   that document, you'll see that it says at 6:25 you  
4   missed a call. Is it your understanding that  
5   means you didn't answer that call?

6           A   Yes.

7           Q   Okay. But your interrogatory response  
8   says, "Upon answering the calls," plural. So it  
9   is your understanding that you only answered one  
10   of the two calls?

11          A   So I know that -- so based on my  
12   knowledge from what I submitted at the time, and  
13   then from once the call logs were received.

14          Q   I thought you said the call logs weren't  
15   received.

16          A   Not my -- are you talking about from  
17   AT&T to me? That has not been received yet.

18               MR. SMITH: She's referring to the call  
19   logs produced in this case.

20               MR. CAFFAS: Okay.

21   BY MR. CAFFAS:

22          Q   So it's my understanding your testimony

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1 was those call logs weren't received until after  
2 you submitted these supplemental interrogatory  
3 responses. Are you saying that your supplemental  
4 interrogatory response is not correct and would  
5 need to be changed?

6 A No. My understanding is that they  
7 just -- they just came. They just were received.

8 Q And I'm asking if you're saying that  
9 that means that your statement that upon answering  
10 these calls, plaintiff heard a pause and a click,  
11 so that indicates you answered both calls, right?

12 MR. SMITH: Object to form.

13 A I'd have to refer back to -- I don't --  
14 I don't remember because you're asking  
15 specifically. It says the calls, and you said  
16 there's the one missed call.

17 BY MR. CAFFAS:

18 Q So to reiterate, you said that the  
19 documents marked SMITH4 and SMITH11 --

20 A Yes.

21 Q SMITH11 are screenshots from the calls  
22 that you're describing in the second paragraph of

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1 with the correspondents.

2 BY MR. CAFFAS:

3 Q You contend that June 9 was the last  
4 call that you received that you're seeking damages  
5 for in this case?

6 A Again, whatever I provided initially was  
7 correct, but I know that there's the call logs  
8 that were received. So that is correct, what's in  
9 the logs.

10 Q Can you clarify what you mean by that?

11 A So when I submitted all the  
12 documentation that I had, that was to the best of  
13 my knowledge at the time, but I understand that  
14 the call logs have different information, and they  
15 are -- they are correct.

16 Q And when you say the call logs, are you  
17 referring to call logs that you believe your  
18 counsel has received but you have not yet  
19 reviewed?

20 A Yes. They just came this week, yes.

21 Q So when you say that you believe that  
22 the call logs confirm this not to be the case, is

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1 that based on representations from counsel?

2 A Because it's an accurate -- because of  
3 the logs that were received by the company versus  
4 what I have.

5 Q Right. And I'm just saying you haven't  
6 reviewed these call logs that you're referring to,  
7 right?

8 A Correct.

9 Q So how do you know that the call logs  
10 confirm this?

11 A I rely on my counsel.

12 Q Do you believe that SunPath is the only  
13 company that administers vehicle service  
14 contracts?

15 A No.

16 Q So you're saying that if you received a  
17 call soliciting you for vehicle service contracts  
18 without mentioning they're SunPath's vehicle  
19 service contracts, those would not be about  
20 SunPath vehicle service contracts, right?

21 A They may or may not.

22 Q How do you discern the difference if

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1 A Yes.

2 Q So is it a fair statement that this is  
3 an e-mail from American Protection that would have  
4 solicited you to purchase a SunPath vehicle  
5 service protection plan?

6 A Yes.

7 Q Okay. Does this change your testimony  
8 as to whose products were being sold via the calls  
9 at issue in this case?

10 A So it's SunPath.

11 Q Okay. I just want to clarify. American  
12 Protection was placing calls to sell SunPath's  
13 products and services?

14 A On behalf, yes.

15 Q Is it fair to say that you rely on your  
16 counsel to conduct an investigation in this case?

17 A Yes.

18 Q To gather facts?

19 A Yes.

20 Q Are you aware that there were call logs  
21 obtained in this case from Five9, Incorporated?

22 A Yes.

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1           Q    Are you aware that those call logs were  
2           provided to SunPath?

3           A    Yes.

4           Q    Is it your testimony that the call logs  
5           produced by Five9, Incorporated are accurate?

6                   MR. CAFFAS:  Objection, calls for  
7           speculation.

8           BY MR. SMITH:

9           Q    The call logs that were produced to  
10          SunPath, is it your testimony that the records of  
11          the calls are accurate?

12                   MR. CAFFAS:  Objection, calls for  
13          speculation.

14          BY MR. SMITH:

15          Q    You can answer.

16          A    Just to make sure -- I just want to make  
17          sure I understand.  That's what you obtained,  
18          that --

19          Q    Yes.

20          A    Okay.  Yes, yes.

21                   MR. CAFFAS:  Objection to form.

22          BY MR. SMITH:

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1           Q   We previously discussed the complaint  
2           and your discovery responses in this case.  At the  
3           time you executed -- sorry.  We'll take them one  
4           at a time.

5                     At the time you reviewed the complaint,  
6           were those facts complete and accurate to the best  
7           of your recollection at that time?

8           A   At that time.

9           Q   Okay.

10          A   To the best of my knowledge, correct.

11          Q   And at the time you reviewed each of the  
12         discovery responses, were those responses accurate  
13         to the best of your knowledge at that time?

14          A   Yes, at that time to the best of my  
15         knowledge.

16          Q   And was the information contained in  
17         both the complaint and the discovery responses  
18         based on information that you provided to your  
19         counsel near the time of the call?

20          A   Yes.

21          Q   If your --

22                     MR. CAFFAS:  Objection to vague on the



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1 last question. "Informed", I guess.

2 BY MR. SMITH:

3 Q If your discovery responses conflict  
4 with the call logs that we produced in this case,  
5 do you agree that the call logs would be accurate?

6 A Yes.

7 MR. CAFFAS: Objection, calls for  
8 speculation.

9 A Yes. I believe that the call logs would  
10 be accurate.

11 BY MR. SMITH:

12 Q Do you have any recollection during any  
13 of the calls that the caller identifying  
14 themselves by their first and last name?

15 A I do not.

16 MR. SMITH: I don't have any further  
17 questions.

18 MR. CAFFAS: Nothing further for me  
19 either. We can go off the record.

20 MR. SMITH: Before we do, can we reserve  
21 signature.

22 (Off the record at 3:47 p.m. EST)